Supreme Court of the United States.

COMMERCIAL PUBLISHING COMPANY,
Plaintiff in Error,

vs.

SAMUEL C. BECKWITH,
Defendant in Error.

No. 369.
October Term,
1901.

Brief for Plaintiff in Error in Opposition to Motion to Dismiss or Affirm.

FACTS.

In September, 1893, there was in existence at Memphis Tennessee, a corporation organized under the laws of Tennessee called the Memphis Appeal Company, which was engaged in the publication at the City of Memphis of a newspaper known as the Memphis *Appeal-Avalanche*.

Record, p. 11, fol. 19.

In September, 1893, a suit in equity was brought in the Chancery Court of Shelby County, Tennessee, by one Gwynne and others against said Memphis Appeal Company and others. Samuel C. Beckwith, the defendant in error herein, was a party defendant to that suit.

Record, p. 13, fol. 22.

On September 30, 1893, a decree was entered in the Gwynne suit appointing one Chase receiver of the property of said Memphis Appeal Company and directing him to continue the publication of said newspaper under the direction of the Court. Said receiver qualified and published the newspaper as such receiver from September 30, 1893, to June 16, 1894

Record, p. 13, fol. 22.

Between September 30, 1893, and June 16, 1894, said receiver published in said newspaper advertisements for account of the various parties mentioned in Exhibit B, amounting in value to $3,902.74.

Record, p. 13, fol. 23.

On October 5, 1893, a petition for removal to the Circuit Court of the United States for the western division of the Western District of Tennessee was filed by Beckwith in the Gwynne suit on the ground that as to him a separable controversy existed and thereupon the State and Federal Court acquired and exercised concurrent jurisdiction of said cause.

Record, p. 14, fol. 24.

Early in November, 1893, one Fink brought a general creditor's bill against the Memphis Appeal Company for the purpose of winding it up as an insolvent corporation. Other suits were also brought against said Memphis Appeal Company. In January, 1894, all the pending suits, including that of Gwynne, were consolidated into one action.

Record, p. 14, fol. 24.
Record, p. 25, fol. 43.
Record, p. 26, fol. 45.

The consolidated action went to final decree on March 26,

1896, and from a portion of said decree said Beckwith prayed and was allowed an appeal.

Record, p. 15, fol. 26.
Record, p. 30, fol. 52.
Record, p. 36, fol. 61.

Said decree of March 26, 1896, was affirmed with some modifications by the Supreme Court of Tennessee, and thereupon under the procedendo from the Supreme Court a decree was entered on July 8, 1896, distributing the assets of the insolvent corporation among its creditors.

Record, p. 36, fol. 62.
Record, p. 15, fol. 26.

While the receiver was publishing the advertisements in question, a warfare of words was being carried on between Beckwith and the receiver relative thereto. Beckwith insisted that by virtue of a contract which he had made with the insolvent corporation more than two years before he had the right to collect the moneys due the Receiver for advertising and apply same on a claim which he held against the corporation. The Receiver on the other hand contended that he was in charge of the newspaper as Receiver, and that it was his duty to secure to the trust estate the revenues derived by him therefrom. Thereupon Beckwith notified the Receiver that he repudiated all rights claimed by said Receiver in the premises.

Record, p. 13, fol. 23.
Record, p. 23, fol. 39.
Record, p. 24, fol. 41.
Record, p. 25, fol. 42.

It appears by the record that the newspaper was not self-sustaining while published by the Receiver and that he was obliged to issue Receiver's certificates in order to carry it on.

Record, p. 27, fol. 47.
Record, p. 22, fol. 37.

As stated, the consolidated causes were not heard and disposed of until March, 1896. Some two years before the hearing and in April, 1894, the Court found that "the property in the hands of the Receiver has been and is not self-supporting and that the earnings, income and profits thereof have been and are insufficient to meet and defray the cost and expense incident thereto," etc., and that it would be to the interest of all the parties to have same sold at public auction.

Record, p. 27, fol. 47.

It then became evident to the Court that in view of the conflicting claims of Beckwith and the Receiver to the accounts due the latter for advertisements published by him, a sale of the interest of either would be futile as the purchaser would only buy a lawsuit. So it was that in moulding the decree of sale the Court provided for a sale of the accounts themselves and ordered the purchase money to stand in lieu of the property sold.

In view of the fact that the State and Federal Courts were exercising concurrent jurisdiction of the litigation, the decree provided that the sale should be made by E. B. McHenry and James B. Clough, as special commissioners. The former was the Clerk and Master of the Chancery Court, while the latter was the Clerk of the United States Circuit Court.

Record, p. 14, fol. 12.
Record, p. 29, fol. 51.
Record, p. 27, fol. 46.
Record, p. 29, fol. 50.

The decrees of sale were entered simultaneously in the Chancery and United States Circuit Courts and contained the jolliowng provisions:

"*All accounts which may be or are to become due to the receiver by reason of the operation of the newspaper in his hands will*

pass to and be acquired by the purchaser at this sale, who will become the full owner of the same."

It further provided that the purchaser should take the property subject to any contract obligations incurred by the Receiver, and to any claims of the Receiver for moneys personally advanced by him to the trust estate.

The decree then provided as follows:

"The purchaser at the sale herein ordered, will acquire the absolute title to all the property decreed to be sold, free from all claims, liens and encumbrances whatever, save as provided above as to the contract obligations of the Receiver; and the proceeds of the sale, will stand in these causes in lieu and place of the property itself."

Record, p. 28, fols. 48, 49.

Pursuant to said decrees the Commissioners on June 16, 1894, sold all the property of the insolvent corporation, including these accounts, at public auction, in the City of Memphis, when and where same was struck off to one West J. Crawford, for $65,200.00.

Record, p. 15, fol. 25.

On July 3, 1894, decrees were entered in the Chancery and United States Circuit Courts confirming said sale.

Record, p. 15, fol. 25.

At the time of making said various decrees said Chancery and United States Circuit Courts had jurisdiction of the subject matter of said various actions and of the parties thereto.

Record, p. 15, fol. 25.

Prior to the commencement of this action said West J. Crawford assigned to plaintiff in error all the rights against

defendant in error which he acquired at said sale of June 16, 1894.

Record, p. 15, fol. 26.

When plaintiff in error proceeded to collect these claims thus acquired by Crawford at the sale of June 16, 1894, it transpired that defendant in error had already collected same from the various debtors and had appropriated the money to his own use, claiming that it belonged to him and not to plaintiff in error.

Record, p. 14, fol. 23.

It will be noted that these moneys which defendant in error collected from these various debtors were paid to him by them "*in consideration of the publication of advertisements for their account in said Memphis Appeal-Avalanche, between Sept.* 30, 1893, *and June* 16, 1894, *while said Receiver was publishing said paper.*"

Record, p. 14, fol. 23.

In other words the very moneys which defendant in error collected and appropriated represent services rendered direct to said debtors by said receiver, or, to use the language of the record, "*in consideration of the publication* (by the receiver) *of advertisements for their account.*"

After the usual demand, plaintiff in error sued defendant in error in the Supreme Court of the State of New York for the conversion of these moneys. Plaintiff in error was in the first instance successful. At the trial Term a verdict was directed in its favor. This was affirmed by the Appellate Division of the Supreme Court, but the New York Court of Appeals reversed the courts below and ordered the complaint dismissed. On the remittitur being filed below, the Supreme Court entered a final judgment dismissing the complaint, hence this writ of error.

The Federal question here presented arises in a two-fold

aspect. 1st. So far as the court below refused to give validity to the decree of sale of the United States Circuit Court, and the sale made thereunder, or to recognize the rights of the purchaser thereby acquired, it presents a Federal question under Sec. 709 of the United States Revised Statutes as being an attack upon a title claimed under an authority exercised under the United States. 2nd. So far as the Court below refused to recognize the rights of the purchaser under the decrees of sale of the State and Federal Courts and the sale made thereunder, it presents a Federal question under Sec. 905 of the United States Revised Statutes, as being a refusal to give to the records and proceedings of the Chancery and United States Circuit Courts such faith and credit as they have by law or usage in the Courts of the State of Tennessee.

FIRST POINT.

The record presents a Federal question.

Plaintiff in error in its complaint clearly alleged that it claimed title to the moneys in question through the purchase of these advertising accounts by West J. Crawford, its assignor, at the judicial sale of June 16, 1894.

That sale having been made by two commissioners appointed for that purpose by decrees simultaneously entered in actions then depending in the State and Federal Courts to which defendant in error was a party, it became the duty of the Supreme Court of New Yorkto accord to them such faith and credit as they would have been entitled to by law or usage in the courts of Tennessee.

It would have been bad pleading for plaintiff in error to have alleged in his complaint that he relied upon any of the provisions of the Constitution or laws of the United

States, and for that reason proposed to present a Federal question to the New York Court.

When plaintiff in error went into the New York Court claiming title to these accounts as a purchaser thereof at a judicial sale made in an action pending in the Tennessee court to which defendant in error was a party, it followed as a matter of law from the facts pleaded that plaintiff in error was, so far as concerned the binding force of the Tennessee decrees entitled to the protection of the United States Constitution and laws which forbade the New York Court from questioning their validity provided they were valid in the State where they were rendered. The Supreme Court at the Trial Term and in the Appellate Division gave due effect to the Tennessee decrees, and it was not until the case reached the Court of Appeals that the mandate of the Federal Constitution and laws was ignored.

It is true that we have from the beginning contended thatBeckwith never had a shadow of interest in these accounts, and that, being the fruits of the operation of the newspaper by the Receiver, they were wholly the property of the latter. This is the question to which nearly all of the opinion of the New York Court of Appeals is addressed, and that Court has held that the original title of Beckwith was better than that of the Receiver. If this was the only question in the case, or if the decision of the Court of Appeals could conclude the controversy, this Court would be without jurisdiction.

But that question could only partially dispose of the rights of the parties, because it is but tributary to the larger one which I have discussed

The plaintiff in error represents the purchaser at the judicial sale under the decrees above mentioned. It was of no consequence to the purchaser whether the Receiver or Beckwith had the better title The proceedings advised him that both parties claimed the accounts, and the decrees of sale assured him that he would obtain the title of both,

and that the controversy between them would be transferred to the purchase money.

These facts guaranteed to the purchaser a good title, and it is the title thus acquired which plaintiff in error is seeking to maintain in this action

The New York Court of Appeals, passing to the other question, denied that the purchaser acquired title to these accounts at the sale in the following language :

"Under the judgment the purchaser became entitled to all the moneys due and owing to the Receiver by reason of the publication of the paper, but moneys that did not belong to the Receiver, or to which he was not entitled, did not pa s to the purchaser, and we find nothing in the prior decree that is an adjudication upon this question."

Brief of ~~Plaintiff~~ Defendant in error, p. 20.

As the purchaser bought under the provisions of the decrees of sale I suppose it is those decrees which the Court of Appeals characterized as "the judgment." If this be so then the Court of Appeals in saying that the purchaser did not get title, because the moneys did not then belong to the receiver, ignored all the provisions of the decrees of sale which provided for a sale of the accounts themselves, and not the mere interest of one or the other of the contending parties.

The Court of Appeals seems to have discussed this question as though we had asserted that in the Tennessee litigation there had been an adjudication that the accounts belonged to the receiver and not to Beckwith, but we never made any claim of that kind. Our contention was that in view of these rival claims the Court, having jurisdiction of both parties, had sold the accounts themselves to Crawford, that the latter had paid full value for same, that the purchase money had been paid into Court to stand in lieu of the property sold, that the receiver or

Beckwith, as one or the other had the better title to the accounts, would get this money, and that the title thus acquired by Crawford was not to be disturbed by the bickerings of the two claimants.

The Court of Appeals must have misapprehended this question for this reason. The sale took place in June, 1894 (Record, p. 15, fol. 25). At that time the rights of the purchaser were fixed. Mr. Justice HAIGHT, however, in delivering the opinion of the Court of Appeals, says in that portion which I have quoted, "We find nothing in the *prior* decree that is an adjudication upon this question."

There was no "prior" decree, for the decrees of sale were made in the early part of the litigation, to wit, in April, 1894 (Record, p. 14, fol. 24), while the decree on final hearing was not made until March, 1896 (Record, p. 30, fol. 52), about two years later.

So we say that the Court of Appeals must have looked to the decree of March, 1896, in search of an adjudication of the respective claims of the Receiver and Beckwith to these moneys and finding none, come to the conclusion that we had obtained no rights in the Tennessee litigation. They could have reached this result only by overlooking the provisions of the decrees of sale made two years before and as these important decrees are not referred to, or noticed in any way, in the opinion of the Court of Appeals we are forced to the conclusion that they were overlooked.

So we now see that while plaintiff in error claimed title to these accounts under decrees made in the Courts of a sister State having jurisdiction of the parties, the New York Courts refused to give effect to these decrees. This then raises a Federal question and gives this Court jurisdiction.

The law governing this question was so clearly stated by the late Mr. Justice BRADLEY that I cannot forbear from quoting from his opinion. Said the learned Judge :

"Where a State Court refuses to give effect to the judgment of a Court of the United States rendered upon the

point in dispute, and with jurisdiction of the case and the parties, a question is undoubtedly raised which, under the Act of 1867 may be brought to this Court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the title or right so set up. It would thus be a case arising under the laws of the United States, establishing the Circuit Court and vesting it with jurisdiction ; and hence it would be within the judicial power of the United States, as defined by the Constitution ; and it is clearly within the chart of appellate power given to this Court, over cases arising in and decided by the State Courts.

The refusal by the Courts of one State to give effect to the decisions of the Courts of another State is an infringement of a different article of the Constitution, to wit, the first section of Article four ; and the right to bring such a ca e before us by writ of error under the twenty-fifth section of the Judiciary Act, or the Act of 1867, is based on the refusal of the State Court to give validity and effect to the right claimed under that article and section.

In either case, therefore, whether the validity or due effect of a judgment of the State Court, or that of a judgment of a United States Court, is disallowed by a State Court, the Constitution and laws furnish redress by a final appeal to this Court."

Dupasseur *v.* Rochereau, 21 Wall., 130, 134.

Whether due effect has been given by a State Court to a judgment or decree of a Court of the United States, is a Federal question within the jurisdiction of this Court on a writ of error to the Supreme Court of the State.

Crescent City Live Stock Co. *vs.* Butchers Union, 120 U. S., 141, 146.

Central Nat Bk. *vs.* Stevens, 169, U. S., 432, 460.

"No particular form of words or phrases has ever been declared necessary in which the claim of Federal rights must be asserted. It is sufficient if it appear from the record that such rights were specially set up or claimed in the State Court in such manner as to bring it to the attention of that court."

It must appear from the record of the case either that the right so set up and claimed was expressly denied, or that such was the necessary effect in law of the judgment. If it appear from the record by clear and necessary intendment that the Federal question must have been directly involved, so that the State Court could not have given judgment without deciding it, that will be sufficient (citing cases).

Green Bay &c. Co. *vs.* Patten, &c., Co., 172 U. S., 58, 67, 68.

The title under which we claim is a title derived under the decree of a Court of a sister State. This title is claimed under a "Statute of the United States" viz—Sec. 905 of the United States Revised Statutes which protects a title so derived.

Under Sec. 709 of the United States Revised Statutes it is this "title" which is to be "specially set up" and this we do by setting out in full our title and how derived under the Tennessee decree.

The language of Sec. 709 as applied to this question is as follows:

"Where any title * * * is claimed under * * * any * * * statute of * * * the United States, and the decision is against the title * * * specially set up * * * by either party" the judgment may be reviewed in this Court.

So it follows that having specifically set out our title in the complaint we have specially set it up within the meaning of Section 709.

The well known case of Spies *vs.* Illinois, 123 U. S., 131, cited on this question by opposing counsel, has, we submit, no bearing on the subject under discussion. There certain persons had been

regularly convicted of crime in the State Courts of Illinois. Their counsel claimed that the acceptance of certain jurors and the admission of certain evidence infringed certain rights guaranteed to the prisoners by the Constitution and laws of the United States. But no claim of that kind was even suggested at the trial. This court therefore held that no Federal question had been "set up or claimed" within the provisions of the United States Revised Statutes.

In the case at bar we claim title as a purchaser under the decree of a court of a sister State, which decree is binding on the defendant in error under the Constitution and laws of the United States and (to quote from Green Bay &c., Co. *vs.* Patten &c. Co. (*supra*), the denial of that title "*was the necessary effect in law of the judgment.*"

It is undoubtedly the rule of this court that where no Federal question was raised below, and where the mind of the State Court was not directed to the fact that a right protected by the Constitution of the United States was relied upon, it is not the duty of this court to look into the record and determine whether the existence of such a claim was necessarily involved.

Eastern & Co. Association *vs.* Welling, 181 U. S., 47.

But the application of this rule always involves the examination of the facts of each case. The success or non-success of the plaintiff in error in the court of first instance, would have much to do with the question. Take the case at bar as an illustration. While the Federal question, as already stated, appears in the complaint where we allege title through a purchaser under the decree of a court of a sister State rendered in an action to which defendant in error was a party, yet had we been defeated in the trial court, we would naturally, by motions, exceptions, etc., have spread the Federal question in terms upon the record. But the trial court and the Appellate Division recognized our claim and found in our favor, so that there was no occasion for plaintiff

in error to set up the claim further than is shown by the complaint.

It must be borne in mind that in this case the New York Court of Appeals could not have given judgment dismissing the complaint without deciding the Federal question against plaintiff in error. While the greater portion of its opinion is devoted to the question of whether Beckwith or the receiver had, prior to the sale the better right to the accounts, yet this question was not controlling. The rule of this court where such a question has been decided by the State Court is as follows:

"If it be found that the issue raised by the question of Federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the State Court of any other matter or issue, which is sufficient to maintain the judgment of the court without regard to the Federal question, then this court will reverse the judgment of the State Court and will either render such judgment here as the State Court should have rendered, or remand the case to that court as the circumstances of the case may require."

Murdock *vs.* City of Memphis, 20 Wall., 500, 636.

It is, perhaps, sufficient on this motion to show that the question of the binding force of the decrees of the Tennessee Courts was before the New York Court for decision, and that, therefore, this case presents a Federal question, but it is so easy to show the error of the New York Court in refusing to give to them their proper effect that a few words on that subject may not be amiss.

Defendant in error in his brief contends (p. 26) that the Tennessee Courts sold only the right, title and interest of the Receiver in these accounts. If this be so, I am quite ready to concede that there is no Federal question in this record, and that the writ of error should be dismissed.

This contention of defendant in error is, however, without merit. An inspection of the broadsides which Beck-

with and the Receiver were launching at each other during the incumbency of the latter, two of them being entitled in the action (Record, pp, 23, 24, fols. 39–42), shows, that with this bitter controversy existing between the parties, it would have been the height of folly for the Tennessee Courts to have sold the mere interest of either, for the simple reason that such a sale would have produced nothing. Experience teaches us that while purchasers at a judicial sale are ready to buy property, they are seldom willing to buy a lawsuit. Therefore, it was a wise exercise of judicial discretion for the Tennessee Courts to sell the accounts themselves, thereby making them bring their full value, and then leave the parties to contend over the purchase money.

But whether it was wise or unwise to sell the accounts themselves in this way, the fact remains that the Court did so, and as Beckwith was a party to that action, he cannot question the propriety of the decrees of sale. If dissatisfied with their terms he should have appealed therefrom, but this he did not do. He certainly cannot acquiesce in the decrees of sale, share in the proceeds and then turn around and attack the title of the purchaser.

But, says defendant in error in his brief (p. 26), the 13th paragraph of the agreed statement of fact shows that only the right, title and interest of the receiver was sold and this statement must dominate and determine the question. But is this a correct statement of the language of paragraph 13? Let us see.

Paragraph 12 (Record, p. 14, fol. 25) recites that in April, 1894, the decrees of sale above-mentioned were made and then goes on to say "A copy of the decrees thus entered in the said Chancery Court are hereto annexed marked Exhibits 5 and 6. The decrees entered in the Circuit Court of the United States were to the same effect."

These decrees as thus set out show on their face the provision that the accounts themselves should be sold, that the

purchaser should acquire a full title thereto free from all claims, and that the proceeds should stand in lieu of the property sold. These provisions have been quoted by me at pages 4 and 5 of this brief.

Now, with these decrees and these provisions for a sale of the accounts incorporated into paragraph 12, let us read paragraph 13, which begins as follows :

" That thereafter and on the 16th day of June, 1894, said Commissioners *acting under the decrees aforesaid* sold at public aution in the City of Memphis,*the property aforesaid*, and also all the right, title and interest of the Receiver," &c.

In other words, the decrees directed the Commissioners to sell the accounts themselves and not the interest of any particular person therein. In so selling they were " acting under the decrees aforesaid," they sold " the property aforesaid " *and* the interest of the Receiver therein. As a matter of course, a sale of the property itself carried not only the interest (if any) of the Receiver, but the interest (if any) of Beckwith as well.

The Commissioners could not have sold merely the bare interest of the Receiver when they sold " the property aforesaid," to wit, the property which the decrees directed them to sell.

The decrees of sale properly described the " accounts " of which the purchaser should become " *the full owner*," as " accounts which may be or are to become due to the Receiver by reason of the operation of the newspaper in his hands," for in any view of the case, they were in the first instance due the Receiver. All that Beckwith ever claimed was the right to collect them and apply them on his claim against the defunct corporation. That this language was intended to describe the accounts themselves and not the mere interest of the Receiver therein, is shown by the further provision of the decrees, which directed that the proceeds of sale stand in lieu of the property sold.

It must be borne in mind that the plaintiff in error does not claim under either Beckwith or the Receiver, but under a stranger, who, relying upon the provisions of the decrees of sale assuring a good title to the purchaser, went to the sale, and paid $65,200.00 for the property, in which sum of money defendant in error had the right to litigate with the Receiver his claim to these accounts, for by the terms of the decrees of sale the proceeds of sale were to stand "in lieu and place of the property itself."

A title thus acquired is safe against the assaults of one who was a party to the action in which the decree of sale was made. If this were not so we should have the owner of the equity of redemption, and who was a party to an action of foreclosure, bringing ejectment against the purchaser after the latter had paid his money and gone into possession.

This question has been discussed in this Court. One of the earlier cases which has been already referred to is

Dupasseur *vs.* Rochereau, 21 Wall., 130.

There one Dupasseur bought certain real estate at a sale by the Marshal of the Circuit Court of the United States for the Eastern District of Louisiana. One Rochereau thereafter sued for the land, and Dupasseur defended on the ground that Rochereau was bound by the decree of sale. *Rochereau was not, however, a party to the action in which the sale was had.*

This Court said: "We are bound to inquire, therefore, whether the judgment of the Circuit Court thus brought in question would have had the effect of binding and concluding Rochereau if it had been rendered in a State Court. We have examined this question with some care, and have come to the conclusion that it would not" (p. 135).

"We think that Rochereau was not concluded by the judgment of the Circuit Court, because he was not a party to it. Therefore, the State Court, in not regarding the decision of the

Circuit Court as decisive of that question, did not refuse to that decision its due and legal effect."

If Rochereau had been a party to the Louisiana action as Beckwith was to the Tennessee suit this Court would undoubtedly have upheld the title of the purchaser at the Marshal's sale.

To the same effect are

Factors, &c. Co. *vs.* Murphy, 111 U. S., 738.
Pittsburg *vs.* Long Island, 172 U. S., 493.
Avery *vs.* Popper, 179 U. S. 305.

Defendant in error also asserts that he could not have been legally a party to the actions which were consolidated with the Gwynne suit, but the record shows that the consolidation was made *on motion of the plaintiff in the Gwynne suit* (Record p. 26, fol. 45). But beyond all this, the decree of sale entered in the consolidated actions must have necessarily been entered in the Gwynne action to which he was confessedly a party. Further than this we find him two years later a party to the consolidated actions, having filed a cross bill therein (Record p. 31, fol. 54) and praying an appeal from a part of the final decree (Record p. 36, fol. 61).

A Federal question identical with the one here discussed, arose in the same way in the leading case of Crapo *vs.* Kelly, 16 Wall., 610.

It seems almost superfluous to restate the facts of a case so celebrated, but a brief summary thereof may be useful in order to compare that case with this.

On March 6, 1861, Gibbs & Jenny, citizens of Massachusetts, were declared insolvent under the laws of that State, whereupon the judge of the insolvent court of Massachusetts appointed Crapo and others assignees and executed and delivered to them an assignment of all the personal property of the insolvents. No assignment was made by the insolvents themselves.

At that time, the insolvents owned an interest in the ship *Arctic*, then in the Pacific Ocean.

On April 30, 1861, the ship entered the port of New York and

was immediately attached by Kelly, sheriff of the county of New York, at the suit of Robinson, a New York creditor of the insolvents. Thereupon Crapo and his co-assignees appeared and demanded the property, claiming title under the Massachusetts assignment and same was turned over to them on giving a forthcoming bond.

Kelly sued Crapo *et al.* on the bond in the New York courts, claiming title under the attachment and Crapo *et al.* defended, claiming title under the Massachusetts decree of insolvency.

The New York Courts sustained the Sheriff's title. Crapo *et al.* sued out a writ of error to this Court, and Kelly moved to dismiss on the ground that no Federal question was involved. Mr. Justice Hunt, in delivering the opinion of this Court said, "Without reference to whether Crapo was right or wrong, whether the question was *res integra* or *res adjudicata*, the fact that he claimed title under the Massachusetts record, and that his claim was overruled, gives the Court jurisdiction of the present case."

The Crapo case in its facts and the principles involved is strikingly like the case at bar. There the Sheriff had seized the property itself, here defendant had collected the accounts, which is the same thing. There Crapo, a citizen of Massachusetts, claimed title to the property under the decree of a Massachusetts Court, here the plaintiff, a citizen of Tennessee, claims title to these accounts under the decree of a Tennessee Court. There the title claimed under the Massachusetts decree was rejected by the New York Court, here the title claimed under the Tennessee decree was likewise rejected by the New York Court. There this Court held that the facts presented a Federal question, here we confidently expect that this Court will make a similar ruling.

Crapo *v.* Kelly was cited and followed in Huntington *v.* Attrell, 146 U. S., 657, 666, where this Court, speaking through Mr. Justice Gray, said:

"The question whether due faith and credit were thereby denied to the judgment rendered in another State is a Federal question, of which this Court has jurisdiction on this writ of error."

Finally, in 1899, the question came before this Court in concrete form in the case of

Hancock Nat. Bk. *v.* Farnum. 176 U. S., 640.

There the plaintiff, who had recovered a judgment against the Commonwealth Loan & Trust Company in the Courts of Kansas on which execution had been returned *nulla bona*, sued defendant, who was a stockholder, in the Courts of Rhode Island, for a sum equal to the amount of his stock, claiming that he was bound by the Kansas judgment. The Rhode Island Court held against this contention, and thereupon the plaintiff came to this Court by writ of error. This Court, in discussing the question, said, per Mr. Justice Brewer:

"The Constitution declares that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and that Congress may not only prescribe the mode of authentication but also the effect thereof. Section 905 prescribes such mode, and adds that the "records and judicial proceedings so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken. Such is the Congressional declaration of the effect to be given to the records and judicial proceedings of one State in the Courts of every other State. In other words, the local effect must be recognized everywhere through the United States" (p. 642).

The Court then adds in applying the rule to the case in hand:

"As the judgment was valid, the Court committed error in allowing the defendant to go behind it and contest matters which were conclusively settled by the judgment against the corporation" (p. 643).

A case very much in point is that of

Dowell *vs.* Applegate, 152 U. S., 327.

The facts in that case were as follows: On January 5, 1883,

there was pending in the Circuit Court of the United States for the District of Oregon, a suit in Equity brought by Dowell against Jesse Applegate, William H. H. Applegate, Daniel W. Applegate and others, praying that a conveyance of certain lands from Jesse to William and Daniel be set aside as fraudulent and the land sold. A decree was entered accordingly. The land was sold under said decree on April 26, 1883, and Dowell became the purchaser. The sale was confirmed and on December 6, 1883, the master made a deed to Dowell.

Three years later Daniel Applegate, claiming under a deed made to him by William Applegate in 1874, brought a suit in the State Court against Dowell to obtain a decree removing the cloud upon his alleged title created by the master's deed of December 6, 1883.

Dowell naturally answered, setting up his title under the decree of April 26, 1883, and the sale had thereunder.

The State Court found in favor of Applegate, and Dowell came to this Court by writ of error.

This Court, after narrating the facts at considerable length, state the questions to be determined as follows (p. 335):

"From this history of the litigation between the parties, it appears that Dowell, in his answer in this suit, asserted his right to the forty acres in dispute under and by virtue of the decree and proceedings in the Circuit Court of the United States. That right having been denied by the judgment of the Supreme Court of Oregon, affirming the judgment of the Circuit Court of Douglas County, it is necessary to inquire:

First.—Whether the decree and proceedings in the Federal Court were, as claimed, void for the want of jurisdiction to hear and determine the suit which was instituted by Dowell in the Circuit Court of Douglas County,, Oregon, and was subsequently removed into the Circuit Court of the United States for the District of Oregon.

Secondly.—Whether if such decree and proceedings were not

void, the State Court gave due effect to them, when adjudging that Dowell took nothing by his purchase of the lands in dispute under that decree.

If these questions be determined in favor of Dowell, then the judgment below was erroneous in that it denied a right specially set up and claimed by him under the authority of the United States."

After stating its reasons the Court announced its conclusions as follows:

"For the reasons given we are unable to concur in the views expressed by the State Court as to the effect to be given to the decree of the Federal Court. We are of opinion that due legal effect is not accorded to it, unless it be adjudged, as this Court does now adjudge, that never having been modified and being in full force and unreversed when the present suit was instituted, that decree conclusively establishes, as between Dowell and Daniel W. Applegate, that the former was entitled to have the lands now in dispute sold for his demands: and consequently, that the title acquired by Dowell, under that decree, cannot be here questioned by Applegate."

By reference to the printed record of above case (No. 209 of October Term, 1893, Record case No. 14196), it will be observed that nowhere in the answer of Dowell is there one word which in terms sets up any right or title under the Constitution or laws of the United States, but as in the case of the plaintiff in error in the case at bar he pleads facts from which such right and title must inevitably flow.

Second Point.

Under the law of Tennessee Crawford obtained at the sale of June 16, 1894, a title to the accounts which neither the Receiver nor Beckwith could thereafter question.

The Supreme Court of Tennessee has declared that the

Chancery Court of Shelby County is a Court of general jurisdiction, and that where it has jurisdiction of the parties and the subject matter and orders the sale of property, the purchaser, being a stranger to the record, has a right to assume that the decree of sale is regular and valid and his title cannot be affected by objections made for the first time after he has purchased and paid the purchase money.

Blanz *vs.* Blain, 95 Tenn., 87, 91.
Anderson *vs.* Ammonett, 9 Lea, 1, 11.
Greenlaw *vs.* Greenlaw, 16 Lea, 435.

Under the practice in Tennessee, property in the hands of a Receiver may be sold *pendente lite*, especially if it is likely to deteriorate in value as was the newspaper plant in the Tennessee suit.

Gleaves *vs.* Ferguson, 2 Shannon's (Tenn.) Cases, 560.

Crawford's title being thus perfect under the law of Tennessee, it was the duty of the New York Court to accord to it like force and effect, and its failure so to do gives the Court jurisdiction to correct the error.

It is respectfully submitted that the motion to dismiss or affirm should be denied.

Dated New York, Oct. 21, 1901.

A. WALKER OTIS,
Counsel for ~~Defendant~~ Plaintiff in Error.